

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26408  
Docket Number MW-26072

Gil Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Chesapeake and Ohio Railway Company  
(Southern Region)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to permit Trackman N. J. Yearego to displace a junior trackman on the Clifton Forge Division on April 25 and 26, 1983 (System File C-TC-1759/MG-4022).

(2) The claimant shall be allowed sixteen (16) hours of pay because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claim before the Board seeks compensation for April 25 and April 26, 1983. Essentially, the Organization claims the Claimant was improperly denied the right to work both days.

It is undisputed that the Claimant was displaced on April 19, 1983, from Force #1122. Also, at the same time a new force was being established at Clifton Forge. Accordingly, under Rule 2, the Claimant had the following options:

1. File a written request to remain in cut-off status until he again stood for work with Force 1122.
2. File a written request to transfer to the newly established force at Clifton Forge.
3. Displace a junior laborer within ten days, notifying the proper Carrier representatives to enable Carrier to contact the employee being displaced before his tour of duty ends on the day before his displacement becomes effective.

The Claimant did not exercise options one or two. Thus, most pertinent here is Rule 2(s) which states:

"Displacement Notification -- Employees making displacements under the provisions of Sections (h) or (i) of this rule will be obligated to notify the proper representative of the Railway Company to enable them to notify the employee being displaced before he quits work on the day before his displacement becomes effective."

Against this background, it is clear to be eligible to work on April 25 or 26, 1983, the Organization would have had to produce evidence on-the-property that the Claimant gave notice of his intent to displace a junior employee no later than the end of the shift immediately prior to April 25, 1983.

The plain truth of the matter is that the critical evidence necessary to sustain the Claim is not properly in this record. The evidence of record shows the Claimant did not give notice of his intention to bump in a timely manner. The Organization did attempt to rely on a written statement by the Claimant but this was not presented on the property. The Carrier asserted without rebuttal that Mr. Yearego informed supervision on April 22, 1983, that he planned to make a displacement on April 26, 1983. However, he showed up for work a day early on April 25, 1983, stating that he had changed his mind but left abruptly when the displacement procedure was outlined to him. He then left without stating his intentions with respect to his exercise of seniority and did not return until April 27, 1983.

In view of the foregoing, the Claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1987.